



## Senate

General Assembly

**File No. 759**

February Session, 2014

Substitute Senate Bill No. 388

*Senate, May 5, 2014*

The Committee on Government Administration and Elections reported through SEN. MUSTO of the 22nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING THE TASK FORCE ON VICTIM PRIVACY AND THE PUBLIC'S RIGHT TO KNOW.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subdivision (3) of subsection (b) of section 1-210 of the  
2 2014 supplement to the general statutes is repealed and the following  
3 is substituted in lieu thereof (*Effective October 1, 2014*):

4 (3) Records of law enforcement agencies not otherwise available to  
5 the public which records were compiled in connection with the  
6 detection or investigation of crime, if the disclosure of said records  
7 would not be in the public interest because it would result in the  
8 disclosure of (A) the identity of informants not otherwise known or the  
9 identity of witnesses not otherwise known whose safety would be  
10 endangered or who would be subject to threat or intimidation if their  
11 identity was made known, (B) the identity of [minor] witnesses (i) to a  
12 drug offense under chapter 420b, a sexual offense under subdivision  
13 (2) of subsection (a) of section 53-21 or part VI of chapter 952 or a crime

14 of violence, (ii) who are under the age of eighteen at the time of  
15 witnessing such offense or crime or making a statement to a law  
16 enforcement agency concerning such offense or crime, (C) signed  
17 statements of witnesses, (D) information to be used in a prospective  
18 law enforcement action if prejudicial to such action, (E) investigatory  
19 techniques not otherwise known to the general public, (F) arrest  
20 records of a juvenile, which shall also include any investigatory files,  
21 concerning the arrest of such juvenile, compiled for law enforcement  
22 purposes, (G) the name and address of the victim of a sexual assault  
23 under section 53a-70, 53a-70a, 53a-71, 53a-72a, 53a-72b or 53a-73a, or  
24 injury or risk of injury, or impairing of morals under section 53-21, or  
25 of an attempt thereof, or (H) uncorroborated allegations subject to  
26 destruction pursuant to section 1-216;

27 Sec. 2. Subdivision (27) of subsection (b) of section 1-210 of the 2014  
28 supplement to the general statutes is repealed and the following is  
29 substituted in lieu thereof (*Effective October 1, 2014*):

30 (27) Any record created by a law enforcement agency or other  
31 federal, state, or municipal governmental agency consisting of a  
32 photograph, film, video or digital or other visual image depicting the  
33 body or any portion of the body of a victim of a homicide, to the extent  
34 that the disclosure of such record could reasonably be expected to  
35 constitute an unwarranted invasion of [the] personal privacy, [of the  
36 victim or the victim's surviving family members] provided nothing in  
37 this subdivision shall be construed to prohibit the inspection of such a  
38 record in accordance with section 3 of this act.

39 Sec. 3. (NEW) (*Effective October 1, 2014*) (a) As used in this section,  
40 "image" means a record described in subdivision (27) of subsection (b)  
41 of section 1-210 of the general statutes, as amended by this act.

42 (b) A public agency shall permit any person to view an image at the  
43 office or place of business of such agency during regular office or  
44 business hours.

45 (c) Whenever a public agency receives a request from any person to

46 copy or receive a copy of any image and the agency reasonably  
47 believes that the copying of such image could constitute an  
48 unwarranted invasion of personal privacy, the agency shall not  
49 provide a copy or permit the copying of the requested image. Failure  
50 to comply with a request to copy or receive a copy of records under  
51 this section shall constitute a denial for the purposes of section 1-206 of  
52 the general statutes.

53 (d) Whenever a public agency receives a notice of appeal under  
54 section 1-206 of the general statutes concerning the public agency's  
55 denial of a request to copy or receive a copy of a record under  
56 subsection (c) of this section, the public agency shall make a reasonable  
57 effort to provide notice of such complaint to the next of kin of the  
58 homicide victim who is the subject of such record or the legal  
59 representative of such next of kin. Any next of kin of the homicide  
60 victim who is the subject of such record, or the legal representative of  
61 such next of kin, may intervene as a party in such appeal before the  
62 Freedom of Information Commission. The burden of proof in any  
63 appeal under this section shall be upon any public agency claiming  
64 that the copying of such image could constitute an unwarranted  
65 invasion of personal privacy.

66 (e) Any person who removes, copies or otherwise duplicates an  
67 image in violation of this section shall be guilty of a class A  
68 misdemeanor and each distinct violation of this section shall constitute  
69 a separate offense.

70 Sec. 4. (*Effective from passage*) The Legislative Program Review and  
71 Investigations Committee shall conduct a study regarding victim  
72 privacy and all of its aspects and make recommendations for any  
73 necessary legislative changes. On or before January 1, 2015, said  
74 committee shall submit its findings and recommendations concerning  
75 such study to the joint standing committees of the General Assembly  
76 having cognizance of matters relating to government administration  
77 and the judiciary.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2014</i>	1-210(b)(3)
Sec. 2	<i>October 1, 2014</i>	1-210(b)(27)
Sec. 3	<i>October 1, 2014</i>	New section
Sec. 4	<i>from passage</i>	New section

**GAE**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

### ***OFA Fiscal Note***

#### ***State Impact:***

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 15 \$</b>	<b>FY 16 \$</b>
Various State Agencies	GF - Potential Cost	Minimal	Minimal
Judicial Dept.	GF - Potential Revenue Gain	Less than \$10,000	Less than \$10,000

#### ***Municipal Impact:***

<b>Municipalities</b>	<b>Effect</b>	<b>FY 15 \$</b>	<b>FY 16 \$</b>
Various Municipalities	Potential Cost	Minimal	Minimal

### ***Explanation***

The bill modifies the list of records that are exempt from disclosure under the freedom of information act, establishes a process for persons to view certain exempted images, and modifies the appeal process for persons denied access to certain records.

Various state and municipal agencies may potentially incur minimal costs to comply with the next of kin notification process should such agencies receive an appeal for denying access to certain records under the provisions of the bill.

The bill also makes violations of certain provisions a class A misdemeanor which may result in additional revenue for the Judicial Department. The revenue gain is anticipated to be less than \$10,000.

Additionally, the bill requires the Legislative Program Review and Investigations Committee to study victim privacy and issue a report by January 1, 2015. This is not expected to result in a fiscal impact as it is

likely that the committee would rearrange its' 2014 project agenda to accommodate this study.

***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

**OLR Bill Analysis****sSB 388*****AN ACT CONCERNING THE TASK FORCE ON VICTIM PRIVACY  
AND THE PUBLIC'S RIGHT TO KNOW.*****SUMMARY:**

This bill:

1. narrows the exemption under the Freedom of Information Act (FOIA) for law enforcement records identifying minor witnesses;
2. creates a procedure allowing members of the public to view and seek copies of images of homicide victims, which the law allows an agency to keep confidential if disclosure would constitute an unwarranted invasion of privacy; and
3. requires the Legislative Program Review and Investigations Committee to study all aspects of victim privacy and recommend legislative changes to the Government Administration and Elections and Judiciary committees by January 1, 2015.

EFFECTIVE DATE: October 1, 2014, except for the study provision, which is effective upon passage.

**RECORDS IDENTIFYING MINOR WITNESSES**

The bill narrows the exemption from disclosure under FOIA for law enforcement records regarding minor witnesses by limiting it to records of witnesses to:

1. a drug sale or possession crime or other offense under the statutes regulating dependency-producing drugs;
2. a sexual assault, prostitution, or enticing a minor crime or the

portion of the risk of injury crime involving sexual contact; or

3. a violent crime.

The bill also specifies that a minor, currently defined as someone under age 18, must be under age 18 at the time of witnessing the crime or making a statement about it to a law enforcement agency. Current law applies to minor witnesses of any crime.

This exemption allows agencies to keep law enforcement records confidential. By law, law enforcement records may be withheld from disclosure if: (1) they were created in connection with detecting or investigating a crime and are not otherwise available to the public and (2) the agency determines that disclosure would not be in the public interest because it discloses a witness' identity.

## **IMAGES OF HOMICIDE VICTIMS**

### ***Viewing and Seeking Copies of Images***

FOIA requires agencies to disclose public records unless a federal or state statute or specific exemption within FOIA provides otherwise. The bill requires agencies to allow people to view images of homicide victims, regardless of whether an agency could withhold them from disclosure as an unwarranted invasion of personal privacy under FOIA (see below). Viewing must take place at the agency's office or place of business during regular office or business hours, as required for other records under FOIA.

The bill prohibits an agency from providing a copy or permitting the copying of the image if the agency reasonably believes copying could be an unwarranted invasion of personal privacy. Anyone denied a copy can appeal the agency's decision to the Freedom of Information Commission (FOIC) under the bill and current law.

Under the bill, an agency that receives notice of an appeal must make a reasonable effort to notify the next of kin of the victim who is the subject of the requested record or the next of kin's legal representative. The next of kin or legal representative can intervene as



a party in the appeal before the FOIC. The bill places the burden of proof on the public agency that is claiming that copying an image could be an unwarranted invasion of personal privacy.

The bill makes it a class A misdemeanor to remove, copy, or duplicate an image in violation of the bill's provisions. Each distinct violation is a separate offense. By law, a class A misdemeanor is punishable by up to one year in prison, a fine of up to \$2,000, or both.

### ***Scope of Exemption from Disclosure***

Current law allows an agency to withhold from disclosure under FOIA a federal, state, or municipal agency record consisting of a homicide victim's image to the extent that disclosure could reasonably be expected to be an unwarranted invasion of the victim's or his or her surviving family members' personal privacy.

The bill specifies that an agency can withhold the image if it depicts the victim's body or any portion of it. It allows the agency to withhold the image based on the unwarranted invasion of personal privacy, but no longer specifies that it is the victim's or his or her surviving family members' personal privacy.

## **BACKGROUND**

### ***Task Force on Victim Privacy and the Public's Right to Know***

PA 13-311 created this 17-member task force to consider and make recommendations regarding the balance between victim privacy under FOIA and the public's right to know. The task reported its findings and recommendations to the legislature's majority and minority leadership in January 2014.

### ***Legislative History***

The Senate referred the bill (File 610) to the Government Administration and Elections Committee which reported a substitute that:

1. eliminates provisions (a) prohibiting agencies from disclosing under FOIA records depicting homicide victims who are minors

and (b) allowing agencies to withhold from disclosure under FOIA certain homicide-related law enforcement recordings and

2. allows the public to view and request copies of images of homicide victims who are minors maintained by public agencies under the procedures created by the bill.

**COMMITTEE ACTION**

## Judiciary Committee

Joint Favorable Substitute

Yea 27 Nay 11 (04/01/2014)

## Government Administration and Elections Committee

Joint Favorable Substitute

Yea 8 Nay 5 (05/02/2014)